

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT ELLIS,

Petitioner,

v.

M. FOULK, Warden,

Respondent.

No. C 13-1985 CW (PR)

ORDER DISMISSING
PETITION, DENYING
MOTION TO PROCEED WITH
PETITION AND GRANTING
LEAVE TO PROCEED IN
FORMA PAUPERIS

Docket nos. 2, 3

Petitioner, a state prisoner, has filed the present pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 1998 conviction for murder and attempted murder. Petitioner previously challenged the same conviction in a habeas petition that was denied on the merits. See Ellis v. Roe, Case No. C 01-3141 MMC (PR). Since that denial, this Court has denied, under 28 U.S.C. § 2244, several attempts by Petitioner to present a renewed challenge to his conviction without prior approval from the Ninth Circuit. See Ellis v. Hill, Case No. C 12-5673 CW (PR); Ellis v. Hill, Case No. C 11-05389 CW (PR); Ellis v. Hill, Case No. C 11-05121 CW (PR); Ellis v. Hill, Case No. C 09-00351 CW (PR).

A second or successive petition containing previously raised or new claims may not be filed in the district court unless the petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained such authorization. Notably, in the present petition and attached

1 motion seeking leave to proceed with the petition, Petitioner
2 objects to the Ninth Circuit's January 25, 2013 denial of his
3 application to that court for authorization to file a second or
4 successive petition.

5 Because Petitioner here has not obtained prior approval from
6 the Ninth Circuit for this Court to consider his renewed challenge
7 to his conviction in the present petition, the petition is
8 DISMISSED without prejudice to Petitioner's filing a petition in
9 this Court if he obtains the necessary order from the Ninth
10 Circuit.

11 In light of Petitioner's lack of funds, his application to
12 proceed in forma pauperis is GRANTED.

13 The Clerk of the Court shall terminate all pending motions in
14 the present action, enter judgment and close the file.

15 This Order terminates Docket nos. 2 and 3.

16 IT IS SO ORDERED.

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18 Dated: 5/9/2013

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CLAUDIA WILKEN
United States District Judge